

Coronavirus Relief Package Includes Key Workplace Provisions

By Allen Smith, J.D.

December 27, 2020

President Donald Trump has signed a bill to fund the government and provide economic relief in response to the pandemic, including an expansion of the Coronavirus Aid, Relief and Economic Security (CARES) Act's Paycheck Protection Program (PPP). The package also extends the refundable employer payroll tax credit for paid sick and family leave through March 2021, although the Families First Coronavirus Response Act (FFCRA) paid sick and family leave obligations, which are due to expire at the end of this year, were not extended.

"This bipartisan COVID relief package will benefit work, workers and the workplace. We are pleased to see SHRM priorities included in the final bill, such as flexibility for health and dependent care spending arrangements and an extension of employer-provided educational assistance to include student loan repayment as a benefit. Additionally, the expansion of the Paycheck Protection Program to cover 501(c)(6) organizations will provide much needed assistance to SHRM affiliates experiencing financial hardships," said Emily M. Dickens, SHRM chief of staff, head of government affairs and corporate secretary.

Workplace provisions in the relief package included:

- **The PPP.** An additional \$284 billion is allocated for the PPP and eligibility expanded to include all nonprofits, including 501(c)(6) organizations. SHRM sent a letter to Congress on May 5 (www.shrm.org/hr-today/public-policy/hr-public-policy-issues/Documents/SHRM%20Letter%20COV%20Relief%20Nonprofit%20Inclusion%205-5-2020.pdf), signed by all 50 state councils and 149 chapters, urging the expansion of PPP eligibility. Businesses that already received a PPP loan will be eligible to get a second one under the new terms. Some of the PPP funds will be set aside for the smallest businesses and community-based lenders; the relief package also provides \$20 billion in Economic Injury Disaster Loans for smaller businesses.
- **Health and dependent care flexible spending arrangements.** The relief package allows taxpayers to roll over unused amounts in their health and dependent care flexible spending arrangements from 2020 to 2021 and from 2021 to 2022. This provision also permits employers to allow employees to make a 2021 mid-year prospective change in contribution amounts. SHRM advocated in an April 20 letter to Congress (<https://shrm.org/hr-today/public-policy/hr-public-policy-issues/Documents/FINAL%20SHRM%20COV4%20Priorities%204-20-2020.pdf>) for more flexibility in these accounts, including increasing the carryover amount.
- **Employer-provided student loan repayment.** The CARES Act temporarily allowed employers to provide student loan repayment as a benefit to employees through Dec. 31, 2020. Under the provision, an employer may contribute up to \$5,250 annually toward an employee's student loans, and such payment would be excluded from the employee's income. The \$5,250 cap applies to both the new student loan repayment benefit as well as other educational assistance (e.g., tuition, fees and books) provided by the employer under current law. The provision is extended through Dec. 31, 2025.
- **Employer credit for paid family and medical leave.** The Tax Cuts and Jobs Act of 2017 provided a federal tax credit (<https://www.irs.gov/newsroom/section-45s-employer-credit-for-paid-family-and-medical-leave-faqs>) for employers that provide paid family and medical leave to their employees. The relief package extends the employer credit through Dec. 31, 2025, and applies to wages paid in taxable years beginning after Dec. 31, 2020.
- **Employer credit for paid sick leave and family leave.** The FFCRA provided a refundable payroll tax credit for mandated paid sick and family leave. The bill extends the tax credit through March 2021 for employers that continue to voluntarily offer paid sick and

family leave to their employees.

The relief package included other workplace provisions as well (www.shrm.org/hr-today/public-policy/hr-public-policy-issues/Documents/SHRM%20Fiscal%202021%20Omnibus%20and%20COVID-19%20Relief%20-%20Employer%20Provisions%2012-22-2020.pdf), including:

- An extension of the Work Opportunity Tax Credit through Dec. 31, 2025.
- An extension of expanded unemployment insurance.
- An extension of the employee retention tax credit.
- Provisions to end the practice of surprise medical billing.
- Deferred payroll taxes.
- A deduction for business meals.

PPP Loan Program

"The enhancement of the PPP loan program is clearly a point of emphasis for the new stimulus bill," said Joseph Lynyak III, an attorney with Dorsey & Whitney in Washington, D.C. The relief package includes a host of clarifying provisions that direct the Small Business Administration (SBA) to expand the scope of the PPP, he said.

"The new PPP loan amendments reflect numerous corrective measures requested by both lenders and borrowers, and specifically authorize a new version of the PPP program—termed a 'second draw,' " he said.

He grouped the amendments into these general categories: The new second draw program.

- Enhancements for PPP loans of \$150,000 or less.
- Eligibility and administrative processing provisions.
- Borrower and lender liability protections.
- Miscellaneous topics, including specific authority for certain industry segments to receive PPP loans.

"The PPP amendments are effective immediately upon enactment; however, the SBA will clearly be required to issue additional regulatory guidance to fully implement the new PPP authority," Lynyak said.

"Lenders will have to carefully review this new guidance because the language of the PPP section of the legislation is far more complicated than the original version of the PPP program in the CARES Act."

[SHRM members-only policy: FMLA Leave Expansion and Emergency Paid Sick Leave Policy (Coronavirus)

(www.shrm.org/resourcesandtools/tools-and-samples/policies/pages/fmla-leave-expansion-and-emergency-paid-sick-leave-policy-coronavirus.aspx)]

FFCRA Considerations

"Employers should focus on employees who are currently on an FFCRA leave and the fact that the statute is set to expire on Dec. 31," said Carrie Hoffman, an attorney with Foley & Lardner in Dallas. "They should be communicating with employees who are on leave and what the expectations are about returning to work or whether their leave would convert to an unpaid FMLA [Family and Medical Leave Act] leave."

She added that employers should also consider whether they have to provide accommodations under the Americans with Disabilities Act, depending on the reason for the employee's absence. This might particularly be the case for so-called COVID-19 "long haulers," whose symptoms of the coronavirus have persisted.

The FFCRA not being extended "does not mean that COVID-19 is gone or that companies will have fewer COVID-19-related scenarios in the workplace," said Adam Kemper, an attorney with Greenspoon Marder in Ft. Lauderdale, Fla.

"Thus, employers should be prepared to have a plan in place for 2021 that contemplates COVID-19-related leave scenarios and be prepared to comply with applicable state and federal leave laws," he said. "To the extent such laws do not extend leave for as long as an employee needs due to COVID-19, then employers should be prepared to update their own private leave policies to ensure employees have adequate protection to take leave when necessary so as to avoid spreading the virus to others, recuperate from the illness, if applicable, and return to the workforce."

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